IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.691 OF 1998

IN

NOTICE OF MOTION NO.2677 OF 1995

IN

SUIT NO.3513 OF 1995

1.Harsharansingh Pratapsingh Gujral
and others. ...Appellants.

vs.

1.Lokhandwala Builders Ltd.
and others. ...Respondents.

Mr.Rajeev Narula with A.Dasgupta i/b. Jhangiani Narula & Associates, for Appellants.

Mr.N.P.Lashkani i/b. M.Munim & Co., for Respondent no.1.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 24th July,2007.

P.C.:-

1. Heard the learned Counsel appearing for both the sides. By this appeal, the appellants-plaintiffs challenge the order dated 27.11.1997 passed in Notice of motion no.2677 of 1995. By that order, the learned Single Judge had dismissed the notice of motion taken out by the plaintiffs. The plaintiffs, who are the flat purchasers, have filed a suit seeking permanent injunction against the builders not to carry out any construction on the open spaces shown in the approved building plan. In the suit, an order was also sought for direction to the builders to get Co-operative Society of the flat purchasers registered. In that suit, a notice of motion was taken out basically for restraining the builders from carrying out any construction on the open

spaces and also for a direction to take steps to register the society. That notice of motion has been dismissed by the learned Single Judge holding that the plaintiffs-flat purchasers have not been able to make out a prima facie case.

2. We have heard the learned Counsel appearing for both the sides. It is clear from the order of the learned Single Judge that it was canvassed before him on behalf of the plaintiffs that the relationship between the builders and the flat purchasers, apart from allotment letters and agreements entered into between the parties, is governed by the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, sale, management and Transfer) Act,1963, MOFA in brief. It was argued before the learned Single Judge that under that Act a duty is cast on the builders to make allotment of flats on the basis of sanctioned building plan, to construct building according to that sanctioned building

plan and thereafter to take steps to register a co-operative society or an association of the flat purchasers within a stipulated time and thereafter, to execute conveyance in their favour. But perusal of the order of the learned Single Judge shows that the learned Single Judge has considered only the clauses in the agreement which were entered into between the builders and the flat purchasers. The provisions of the above referred Act have not been considered at all.

3. It is useful to note that as per the preamble of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, sale, management and Transfer) Act,1963, MOFA in brief, this Act was enacted to eliminate the abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis. Section 7 specifically provides that after the plans and specifications

of the building, as approved by the local authority, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make any alteration in the structures without the previous consent of that person nor he shall make any other alterations or additions in the structure of building without the previous consent of such persons. Section 10 provides that as soon as a minimum number of persons required to form a Co-operative Society have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a Co-operative Society. As per Rule 8 of the Maharashtra Ownership of Flats Rules,1964, the prescribed period is four months. Section 11 requires that a promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take the flats, which is registered either as a Co-operative Society or as

a Company or to an association of flat takers his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement within the prescribed period. Rule 9 prescribes the period of four months. It means after a minimum number of persons required to form a co-operative Society have purchased the flats, within four months thereafter the promoter has to take steps for registration of a Co-operative Society and within four months after registration of the Society he has to execute conveyance deed in favour of the Society to transfer his right, title and interest in the land and building. Under Section 13(1), if a promoter fails to comply with or contravenes the provisions of Section 10 or 11, he is liable to be punished with imprisonment for a term which may extend to three years or with fine or with both. From this, it is clear that non compliance of the provisions of Section 10 and 11 carry stringent

punishment which includes imprisonment upto three years. No promoter can be allowed to make an agreement to give go-by to the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, sale, management and Transfer) Act,1963, read with the Rules thereunder.

4. In our opinion, therefore, the order of the learned Single Judge suffers from non application of mind on very vital and crucial aspect of the law and on the point which really governs the relationship between the parties. We also find that the building has been completed, flats are occupied by the flat purchasers right from the year 1991 but till today Co-operative society of the flat purchasers has not been registered. No steps have been taken to convey the title of the land and the flats to the flat purchasers. The learned Counsel appearing for plaintiffs stated before us that no further

construction has been carried out by the defendants so far, however, possibility of their carrying out construction cannot be ruled out. In our opinion, in view of the fact that the building as per the sanctioned plan has already been constructed and there is occupation certificate granted by the Corporation and the flats are occupied, the defendants cannot escape from their statutory liability to get Society registered as per the above referred Act and thereafter to execute a sale deed of the property in favour of the Society. The situation as it exists today is that though there is a statutory obligation on the builders, they have totally disregarded them. The plaintiffs, who are the flat purchasers, have spent their hard earned money for purchasing the flats but they are not given any conveyance in their favour, with the result they are not in a position to raise loan or money on the flats, even if they want to repair the flat they will not be able to do so.

They will also find it difficult to dispose of their flats, if they so desire. Taking overall view of the matter therefore, in our opinion it is imperative that in compliance of their obligation under the Ownership of Flats Act, the builder should take immediate steps to get the Co-operative Society of the occupants of the flats and Row houses registered, and till that is complied with, the builder should not be permitted to carry out any further construction. In our opinion, therefore, the following order would meet the ends of justice:-

(i) The appeal is allowed. The order made by the learned Single Judge is set aside.

(ii) The defendants are directed to take immediate steps to get co-operative society of the flat purchasers and the purchasers of the row houses registered in accordance with law, and thereafter, in accordance with the provisions of

the Maharashtra Ownership of Flats Act take steps to convey the title of the property.

(iii) Till the Society is registered and till the defendants-builders comply with their obligations under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, sale, management and Transfer) Act,1963, the builders-defendants are restrained from carrying out any further construction on the land which may be lying vacant.

Appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)